

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

TONYA J. SMITH,
Plaintiff,

vs

LINDA D. SMITH,
Defendant.

Case No. 1:12-cv-341

Beckwith, J.
Litkovitz, M.J.

**REPORT AND
RECOMMENDATION**

This matter is before the Court on plaintiff's motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1). (Doc. 1). Plaintiff's affidavit indicates that she is currently employed, earning an annual salary of \$54,199. *Id.* at 2. Plaintiff's monthly income less her reported debts leaves in excess of two thousand dollars per month. The Court is unable to conclude from plaintiff's affidavit that her assets are insufficient to provide herself with the necessities of life and still have sufficient funds to pay the full filing fee of \$350.00 in order to institute this action. *See Adkins v. E.I. DuPont De Nemours & Co., Inc.*, 335 U.S. 331, 339 (1948). Therefore, plaintiff's motion to proceed *in forma pauperis* (Doc. 1) should be **DENIED**.

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's motion for leave to proceed *in forma pauperis* be **DENIED**.
2. Plaintiff be **GRANTED** an extension of time of **thirty (30) days** from the date of any Order adopting this Recommendation to pay the required filing fee of \$350.00 or to submit an affidavit showing her income, assets, and debts are such that she is unable to provide herself and her family with the necessities of life and still have sufficient funds to pay the full filing fee of \$350.00 in order to institute this action. *See Adkins v. E.I. DuPont De Nemours & Co., Inc.*,

335 U.S. 331, 339 (1948). Plaintiff's complaint should not be deemed "filed" until the appropriate filing fee is paid or she is granted leave to proceed *in forma pauperis*. See *Truitt v. County of Wayne*, 148 F.3d 644, 648 (6th Cir. 1998). Plaintiff should also be advised that if she fails to pay the filing fee or submit an affidavit in support of her application to proceed *in forma pauperis* within the thirty (30) day time limit this matter will be closed.

Date: 5/23/12


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).